

Hearing Date: November 27, 2018, 1:30 PM
Objection Deadline (Extended): November 19, 2018, 4:00 PM

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,)	
)	Case No. 18-23538 (RDD)
)	
Debtors.)	(Jointly-Administered)
)	

LIMITED OBJECTION OF SHLD LENDCO, LLC, TO DEBTORS' DIP MOTION

SHLD Lendco, LLC ("SHLD"), by and through its undersigned attorneys, hereby files its limited objection (this "Objection") to the Debtors' *Motion for Authority to (a) Obtain Postpetition Financing, (b) Use Cash Collateral, (c) Grant Certain Protections to Prepetition Secured Parties, and (d) Schedule Second Interim Hearing and Final Hearing* [ECF No. 7] (the "DIP Motion")¹, and in support thereof, SHLD respectfully states as follows:

1. SHLD is a lender under the Debtors' IP/Ground Lease Term Loan and is owed approximately \$30 million as of the Petition Date, plus accrued and unpaid interest (including default interest), fees, and expenses (including attorneys' fees).² SHLD's loan is secured by collateral that is Prepetition Encumbered DIP ABL Collateral.

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the DIP Motion.

² SHLD obtained its IP/Ground Lease Term Loan from ESL, and pursuant to an agreement with ESL, any proceeds received on account of such loan are to be repaid first to SHLD and another lender, prior to any payments being made to ESL.

2. SHLD and other similarly-situated lenders with loans secured by such Prepetition Encumbered DIP ABL Collateral are not being provided any adequate protection, because the Debtors take the position that the DIP Loans are not priming such lenders' security interests.³ See DIP Motion, ¶ 13, p. 16. The Interim Senior DIP Order, however, seems to provide otherwise.

3. Specifically, the Debtors appear to be attempting to prime SHLD's existing security interests with the proposed senior position of the Carve-Out, as set forth in paragraph 14 of the Interim Senior DIP Order, which includes a chart that sets forth the priority of claims on collateral of various senior secured creditors. All three columns of this chart list the Carve-Out as most senior; but Bankruptcy Code § 364(d)(1) does not permit this type of non-consensual priming, unless "there is adequate protection of the ... lien on the property of the estate on which such senior or equal lien is proposed to be granted."

4. SHLD has not consented to this priming, and therefore, the Debtors either need to provide adequate protection to SHLD or preserve the existing priority of the Prepetition Encumbered DIP ABL Collateral. Absent such changes, this Court should not approve the DIP Financing.

RESERVATION OF RIGHTS

SHLD raised these issues with the Debtors prior to filing this Objection and is engaging in discussions to resolve such issues. SHLD has also requested, but has not yet

³ The only discussion of priming in the DIP Motion relates to the Prepetition ABL Liens, which the Debtors assert are being primed on a consensual basis. See DIP Motion, p. 22; ¶¶ 13, 22, 43, and 44.

received, drafts of the Final Order and any order approving the Junior DIP Financing and, accordingly, all rights related thereto are reserved.

CONCLUSION

WHEREFORE, SHLD respectfully requests that this Court deny approval of the DIP Facility to the extent that the Carve-Out or any other aspect of the DIP Loans would in any way prime existing liens of SHLD and grant such other relief as is appropriate under the circumstances.

Dated: New York, New York
November 19, 2018

Respectfully submitted,

CAHILL GORDON & REINDEL LLP

/s/ Richard A. Stieglitz Jr.

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